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Simple math and state senators

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A storm is brewing over what constitutes a valid election for Senate majority leader, and it could result in a clash unlike anything seen in the gold-leafed chamber in 43 years.

Senate Republican lawyers, citing a passage in the state Journal Clerk's manual (last updated in 1970) dealing with the selection of a speaker, say a simple majority of the votes cast by those who show up to vote is all that's necessary. As things stand now, that would give Republican leader Dean Skelos the advantage over current Senate Minority Leader Malcolm Smith.

The GOP, led by lawyer Michael Avella, says the math is similar to the way resolutions are passed in the Senate. They also cite the interpretation on Mason's Manual of Legislative Procedures, used nationally by legislators to set rules.

"They are completely wrong," said Mortimer Lawrence, Smith's chief of staff, who is also a lawyer.

Senate Democrats say the majority of the Senate members must get behind one candidate — a higher standard than those simply showing up to vote. The Democrats base their interpretation on how many members must pass legislation.

If history repeats itself, the matter could cause chaos in Albany similar to what happened in 1965, after Lyndon Johnson vaporized Barry Goldwater in the '64 national election — similar to Barack Obama's knockout of John McCain this year.

Democrats swept out Republicans in the New York Legislature, resulting in a rare battle over who would become the Democratic leaders of the Assembly and Senate. The resolution wasn't reached until Republicans came forward to vote for Democrats.

Former Assemblyman and Comptroller Alan Hevesi, a Ph.D. in public law and government, devoted a chapter to this episode in his 245-page doctoral thesis, which was subsequently published as "Legislative Politics in New York State." The writing and the story is provocative, and the peer-reviewed account offers some lessons to today's lawmakers.

First, Hevesi concluded that a senator can only become majority leader by gaining the majority of votes of the chambers members.

That means Smith, whose Democrats will dominate the Senate in January, needs 32 supporters — three fewer than he currently holds due to the intransigence of the famous "Gang of Three": Senator-elect Pedro Espada and Sen. Ruben Diaz Sr., both of the Bronx, and Sen. Carl Kruger of Brooklyn.

Another lesson: When four downstate Democrats wouldn't support the presumed winner of a Democratic conference in 1965 — despite enormous pressure to do so — the Legislature went leaderless until the first week of February 1965.

The logjam was broken by gubernatorial intervention. Gov. Nelson Rockefeller inserted himself, helping

to negotiate winners by delivering Republican votes. Later, most among the Democratic factions supporting the winning majority leader, Joseph Zaretzki and speaker, Anthony Travia, ended up joining the GOP to pass Rockefeller's sales tax plan.

But during the saga, "The Republicans were having a propaganda field day," Hevesi wrote. "They accused the Democrats of boss control, of incompetence, of inability to govern . . . They pointed out the obvious and painful fact that the fight meant no committees formed, no bills processed, no hearings on the budget held, and no work on the people's business begun."

The GOP regained the Senate in 1966 and hasn't let go since.

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